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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 22

LEWIS G. HINES, SECRETARY OF LABOR AND INDUSTRY OF THE COMMONWEALTH OF PENNSYLVANIA, ET AL., APPELLANTS,

vs.

BERNARD DAVIDOWITZ AND VINCENZO TRAVAGLINI

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FILED MARCH 1, 19[illegible].

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 12, 1940.

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[fol. 1]

IN UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

No. 201. June Term, 1939

BERNARD DAVIDOWITZ, a Resident, Citizen and Taxpayer of and to the Commonwealth of Pennsylvania, and VINCENZO TRAVAGLINI, a Resident and Taxpayer of and to the Commonwealth of Pennsylvania, for Themselves, and on Behalf of Any and All Other Residents, Citizens and/or Taxpayers, as May Wish to Join Them as Party Plaintiffs,

vs.

LEWIS G. HINES, Secretary of Labor and Industry of the Commonwealth of Pennsylvania, LYNN G. ADAMS, Commissioner of Pennsylvania State Motor Police, WILLIAM J. HAMILTON, JR., Secretary of Revenue of the Commonwealth of Pennsylvania, WARREN R. ROBERTS, Auditor General of the Commonwealth of Pennsylvania, and F. CLAIR ROSS, State Treasurer of the Commonwealth of Pennsylvania

DOCKET ENTRIES

Jul. 7, 1939. Complaint.

Jul. 7, 1939. Summons issued returnable 20 days after service.

Jul. 7, 1939. Copies of complaint handed U. S. Marshal. 5.

Jul. 7, 1939. Præcipe for appearance of Ralph P. Needle, Esq., as associate counsel for plaintiffs.

Jul. 7, 1939. J. S. 5.

Jul. 12, 1939. Summons returned served also copies of complaint 7-10-39.

Jul. 12, 1939. Not served as to Warren B. Roberts & F. Clair Ross, by direction of Ralph P. Needle, Esq. (M. F. & E. $12.66).

Aug. 10, 1939. Answer of defendants.

Aug. 2, 1939. Motion for judgment on the pleadings and

Aug. 2, 1939. Order fixing hearing for Oct. 2, 1939 at 10 A. M. at Scranton, Pa. E. S. T. (W)

Sep. 29, 1939. Petition of Philadelphia Emergency Conference on alien legislation, et al., for leave to file a brief Amicus Curiae and

Sep. 29, 1939. Order granting leave to file a brief Amicus Curiae (W)

Oct. 21, 1939. Order dated Oct. 12, 1939, designating Hon. John Biggs, Jr., and Hon. Charles Alvin Jones, U. S. Circuit Judges, 3rd Cir., to assist me to hear and determine above named pending case. (W)

Nov. 12, 1939. Rebuttal brief filed by the associations allowed to file briefs as friends of the Court. (Copies mailed Judges direct.)

Nov. 30, 1939. Opinion: The control of aliens and the conditions of their habitation in the States of the United States must remain in the Federal Government. A perpetual injunction will issue against the defendants named, Officers of the Commonwealth of Pennsylvania, enjoining them from enforcing the Act.

Nov. 30, 1939. Notices of entry of opinion mailed to all counsel for defendants.

Nov. 30, 1939. Perpetual Injunction issued.

Nov. 30, 1939. Original and five copies of injunction mailed Ralph P. Needle, Esq.

Nov. 30, 1939. J. S. 6.

[fol. 2] Dec. 4, 1939. Copy of provisions of treaties of Commerce & Navigation, & letter from State Department.

Dec. 11, 1939. Perpetual Injunction returned with acceptance of service thereon, 12/4/39, for the various respondents.

Dec. 15, 1939. Order amending Perpetual Injunction by striking the word "further" where it first appears in said writ; by striking from the said writ the phrase "the further constructing or using, or"; and by striking therefrom the words "requiring registration to be made by aliens on or before the first day of January, 1940, and during the month of December, 1939. (W)

Dec. 15, 1939. Copies of order mailed Ralph P. Needle, Esq., also Claude T. Reno, Attorney General of Pa.

Dec. 29, 1939. Order, dated Dec. 28, 1939, amending printed Opinion filed by striking from note 3 appearing upon page 6 the semicolon, quotation mark and three periods before the word "that" as the same appear and the quotation mark after the word "statute" in said note; and by striking the numeral "2" from the second line of the second paragraph of page nine and substituting in lieu thereof the numeral "3"; and by striking the word "Judicial" from the eleventh line of the second paragraph of page

eleven of said printed opinion and inserting after the word "Code" the phrase "of the United States (8 USCA)". (Biggs.)

Dec. 29, 1939. Copies of order mailed Ralph P. Needle, Esq., also Claude T. Reno, Attorney General of Pa.

Feb. 7, 1940. Petition of defendants for an appeal of decree entered Nov. 30, 1939 and

Feb. 7, 1940. Assignment of errors.

Feb. 7, 1940. Statement as to jurisdiction of appeal.

Feb. 7, 1940. Præcipe for transcript of record on appeal.

Feb. 8, 1940. Order allowing appeal (W).

Feb. 16, 1940. Acceptance of service of Notice of Appeal.

Feb. 26, 1940. Copy of præcipe for transcript of record on appeal and

Feb. 26, 1940. Acceptance of service thereon and Appellees Waiver of the 10 days allowed to file additional requirements for record on appeal.

[fol. 3] IN UNITED STATES DISTRICT COURT

[Title omitted]

COMPLAINT—Filed July 7, 1939

To the Honorable, the Judges of the said Court:

The plaintiffs above named, on behalf of themselves and on behalf of all other residents or citizens or taxpayers who may lawfully join herein, bring this civil class action against the defendants above named, and complain and allege, upon information and belief, as follows:

[fol. 4] I. Jurisdiction and Venue

1. This complaint is filed, these proceedings are instituted, and the jurisdiction of this Court exists and is invoked under and by virtue of the Judicial Code of March 3, 1911, Sec. 24, Par. 14, as amended by 36 Stat. 1092, entitled "Suits to Redress Deprivations of Civil Rights" (Title 28 U. S. Code Sec. 41).

2. The defendants against whom this action is filed, and the acts which this complaint seeks to enjoin, are all located in the Middle District of Pennsylvania. All of the defendants

hold office within the said district, although many of their acts will have effect, in part, outside the said district.

II. Description of Plaintiffs

3. Bernard Davidowitz is a resident of the City of Philadelphia, a citizen of the United States of America, and a taxpayer of and to the Commonwealth of Pennsylvania.

4. Vincenzo Travaglini, a resident of the City of Philadelphia, is an alien, born in Abruzzi, Italy, in 1893, having come to the United States of America in 1920, and resided in the City of Philadelphia since his arrival in the United States. He is not naturalized, nor has he filed a declaration of intention to become a citizen of the United States of America.

III. Description of Defendants

5. Lewis G. Hines is Secretary of Labor and Industry of the Commonwealth of Pennsylvania, and as such, is in charge of the Department of Labor and Industry, charged interalia with certain duties under said Act No. 304.

6. Lynn G. Adams is the Commissioner of the Pennsylvania State Motor Police, and interalia is charged under Act No. 304 of the 1939 Laws of the Commonwealth of Pennsylvania, more specifically referred to hereinafter, with certain administrative and executive duties.

[fol. 5] 7. William J. Hamilton, Jr., is the Secretary of Revenue of the Commonwealth of Pennsylvania, charged interalia with the issuance of motor vehicle operators' and owners' licenses, and with certain duties and prohibitions under said Act No. 304.

8. Warren R. Roberts is the Auditor General of the Commonwealth of Pennsylvania, and as such is authorized and empowered to approve or disapprove requisitions for the payment of money out of the State Treasury of the Commonwealth of Pennsylvania in accordance with valid appropriations made by the General Assembly of the said Commonwealth.

9. F. Clair Ross is the State Treasurer of the Commonwealth of Pennsylvania, and as such is authorized to approve or disapprove requisitions for payment of money out of the State Treasury of the Commonwealth of Pennsyl-

vania, and, when such requisitions have been approved by him and by the Auditor General of said Commonwealth, to make payments out of the State Treasury in accordance with warrants drawn upon such approved requisitions.

IV. Violations of Federal Constitution and Statutes upon Which Complaint Is Based

10. On June 21, 1939, Arthur H. James, Governor of the Commonwealth of Pennsylvania, approved an enactment of the General Assembly of the Commonwealth of Pennsylvania, entitled, "An Act requiring certain aliens to register with the Department of Labor and Industry and to carry, and upon proper demand, to exhibit identification cards, prohibiting the issuing of certain registrations and licenses to aliens under certain circumstances; and prescribing penalties", being Act No. 304 of the 1939 Session of the General Assembly of Pennsylvania. A true and correct copy of said Act is attached hereto, and marked Exhibit "A".

11. Plaintiffs are advised by counsel, and therefore aver and complain that Act No. 304, of which Exhibit "A" is a copy, is null, void and of no effect:

[fol. 6] (a) Because it violates Article I, Section 8, Clause 3, of the Constitution of the United States of America, in that it trespasses on the exclusive Federal power to regulate interstate and foreign commerce, and the exclusive Federal power to regulate immigration and aliens;

(b) Because it violates Article VI, Clause 2, of the Constitution of the United States of America, which declares that the Constitution and Laws of the United States made in pursuance thereof shall be the supreme law of the land;

(c) Because it violates Section 1 of the Fourteenth Amendment to the Constitution of the United States in that it trespasses on the jurisdiction of the United States over aliens, and denies due process and equal protection of the law to all persons within the jurisdiction of the Commonwealth of Pennsylvania;

(d) Because in the exercise of its police power, the General Assembly of the Commonwealth of Pennsylvania cannot draw within its jurisdiction subject matter which has been vested exclusively in Congress by the Constitution;

(e) Because, in addition to the specific violations of the Constitution of the United States, the said Act also violates divers provisions of the Constitution of the Commonwealth of Pennsylvania, to wit:

1. Article 1, Section 1, which sets forth the natural rights of mankind in Pennsylvania;

2. Article 1, Section 8, which prohibits unreasonable searches and seizures;

3. Article 1, Section 17, which prohibits impairment of contracts;

4. Article 3, Section 3, in that the subject matter of the Act is not clearly set forth in its title.

[fol. 7] 5. Article 3, Sections 7 and 8, in that it violates the safeguards imposed with respect to special legislation;

6. Article 9, Section 1, in that it does not provide for uniformity of taxation.

V. Facts of Complaint

12. Plaintiffs are advised and informed by counsel and therefore aver that the aforesaid Act No. 304, more particularly set forth in Exhibit "A", is unconstitutional and void in that it violates the rights and privileges guaranteed unto your plaintiffs and other residents, citizens and taxpayers within Pennsylvania, by the Constitution of the United States of America and the Constitution of the Commonwealth of Pennsylvania, interalia, and not to the exclusion of other violations of their civil rights, as follows:

(a) Plaintiff, Bernard Davidowitz, is a naturalized citizen of the United States of America, is decidedly of foreign appearance, and speaks the English language with a strongly noticeable foreign accent; that notwithstanding the exemption granted to him under the provisions of the Act aforesaid, because of the abovementioned characteristics, he will nevertheless be subjected to constant questioning by enforcement officers to show that he is not an alien required to carry a registration card on his person. If the act is permitted to go into effect he will be unlawfully, unjustly, and to his constant embarrassment discriminated against, and will further be required to carry with him at all times the proof of his naturalization.

(b) Plaintiff, Vincenzo Travaglini, an alien residing in the City and County of Philadelphia, is directly affected by the provisions of Act No. 304 which violate and unlawfully invade the exclusive Federal power to regulate the terms and conditions under which aliens may live in any of the states by virtue of the Constitution of the United States of America, under which the right of the Federal Government therein is paramount and exclusive.

[fol. 8] (c) Plaintiff, Vincenzo Travaglini, further complains and therefore avers that the aforesaid Act No. 304 unjustly and unfairly discriminates against him because it denies to him equal protection under the laws of the Commonwealth of Pennsylvania guaranteed to him and all persons by the Fourteenth Amendment to the Constitution of the United States.

(d) Plaintiff, Vincenzo Travaglini, further complains that he and others similarly situated are discriminated against because Act No. 304 makes it mandatory on the Secretary of Revenue, one of the defendants herein, to refuse to issue a driver's or an owner's license to him unless he produces an alien registration card.

(e) Plaintiff, Vincenzo Travaglini, further complains and therefore avers that Act No. 304 is unconstitutional and void because it interferes with his right as a resident alien in the Commonwealth of Pennsylvania, to obtain employment requiring the use and operation of an automobile, wherein and whereby his is discriminated against, contrary to the laws of the United States of America.

13. Plaintiffs are further informed by counsel and therefore aver that Act No. 304 is unconstitutional and therefore void because notwithstanding that the United States Constitution gives the right to regulate and control immigration and aliens exclusively to the Congress, the provisions of Act No. 304 encroach thereon, in illegally attempting to regulate, control, regiment and classify aliens within the territorial limits of the Commonwealth of Pennsylvania.

14. Plaintiffs are advised by counsel and therefore aver that Section 1 of Act No. 304 exempts from registration "American Citizens", and those (aliens) announcing their intention to become "American Citizens". They respectfully aver that no such classification of citizenship is known

in the laws of the United States of America or in the Commonwealth of Pennsylvania, and that a classification ex-
[fol. 9] tending an exemption to citizens of any nation on the American Continent would be unfair discrimination, as to plaintiff Vincenzo Travaglini and others similarly situated, and would violate the equal protection clause of the Fourteenth Amendment to the Constitution of the United States of America.

15. Plaintiffs are advised by counsel and therefore aver that Section 1 of Act No. 304 which provides for the listing by the alien of all children under eighteen years of age residing with him without exempting native born or naturalized children from being listed, thus indirectly requiring the registration of citizens as well as aliens, no notice of which appears in the title of the Act, is unlawfully discriminatory.

16. Plaintiffs further aver that the provision referred to in Paragraph 5 hereof unlawfully discriminates between subjects of the United States of America who reside with aliens and subjects of the United States who reside with others not subject to the Act aforesaid.

17. Plaintiffs are advised by counsel and therefore aver that Section 1 of Act No. 304 provides for the listing of parents of children residing with the alien subject to the Act, regardless of whether or not such parents are citizens of the United States of America, thereby unlawfully discriminating between citizens who are parents of children residing with aliens subject to the provisions of the Act and parents of children who reside with aliens not covered by the Act or with others. The Act further does not set forth in its title any notice concerning the listing or registration of citizens or parents of such children.

18. Plaintiffs complain that the Act is vague, ambiguous and uncertain in that it fails to define or explain the term "resident", and therefore is incapable of being enforced.

[fol. 10] 19. Plaintiffs complain that the delegation by the General Assembly of the power to the Department of Labor and Industry to make and enforce rules and regulations to carry into effect and enforce the provisions of said Act No. 304, is an improper delegation of legislative powers concerning civil rights.

20. Plaintiffs complain that their right and the rights of others similarly situated are jeopardized by the failure of the Act to specify what court shall have jurisdiction over enforcement of the penalty provisions of the said Act No. 304, nor does the Act provide for appeal, all in violation of the due process clause of the Constitution of the United States.

21. Plaintiffs complain and aver that the Act is defective in that it fails to define failure to register thereunder as a felony or misdemeanor or to classify the offense in any manner which would let those subject to it know in what tribunal the offense could be tried. Plaintiffs complain that the right to jury trial is disregarded.

22. Plaintiffs complain that the provisions requiring aliens to carry registration cards on their persons at all times, to be displayed to any peace officer requesting the exhibition of such card, is an unlawful invasion of the right of privacy of the plaintiffs and others, since, conversely, native born citizens will have to carry their birth certificates, or other indicia of their United States nativity, and naturalized aliens will have to carry their naturalization certificates, in order to avoid being summoned to a hearing as a suspected nonregistered alien.

VI. Need for Equitable Relief

23. Plaintiffs are advised by counsel and therefore aver that unless your Honorable Court will issue an injunction restraining the defendants and all other peace officers in the Commonwealth of Pennsylvania from enforcing the provisions of Act No. 304, irreparable harm will be done to the plaintiffs and to others similarly situated:

[fol. 11] (a) by the defendant, Lewis G. Hines, Secretary of Labor and Industry of the Commonwealth of Pennsylvania, unless your Honorable Court will issue a restraining order, who will direct a subordinate to promulgate rules and regulations under said Act and incur needless and illegal expenditures for the enforcement of the provisions of said Act;

(b) by the defendant, Lynn G. Adams, Commissioner of Pennsylvania State Motor Police, who will set up and classify the persons sought to be registered under the said Act

and instruct his subordinate police officers to proceed with enforcement of the provisions of the said Act, to plaintiffs' embarrassment, in interfering with the right of privacy of the plaintiffs and others similarly situated, detaining the plaintiffs and others similarly situated, in accordance with the terms of the said Act and in violation of the exclusive Federal power over aliens, unless restrained by your Honorable Court;

(c) by the defendant, William J. Hamilton, Jr., Secretary of Revenue of the Commonwealth of Pennsylvania, who, unless restrained by your Honorable Court, under the terms of the Act, will refuse to issue automobile operator's license or owner's license to plaintiff, Vincenzo Travaglini, unless he complies with the unconstitutional requirements of said Act No. 304 to the great inconvenience of the said Vincenzo Travaglini, and to the detriment of his property rights in the continued issuance of said licenses.

(d) by the defendants, Warren R. Roberts, Auditor General of the Commonwealth of Pennsylvania, and F. Clair Ross, State Treasurer of the Commonwealth of Pennsylvania, who will, unless restrained by your Honorable Court, approve requisitions for the expenses of the Department of Labor and Industry, Department of Revenue, and the Pennsylvania State Motor Police in enforcing said Act No. 304 approved on June 21st, 1939, to the irreparable loss, damage and injury of the plaintiffs and other residents, [fol. 12] citizens and taxpayers of and to the Commonwealth of Pennsylvania.

24. Plaintiffs complain and aver that unless your Honorable Court restrains the enforcement of said Act No. 304, the enforcement thereof will:

(a) interfere with the exclusive right of Congress over aliens and immigration.

(b) violate the rights of persons guaranteed under the Fourteenth Amendment to the Constitution of the United States.

(c) violate the civil rights of citizens of the United States guaranteed to them by the Constitution of the United States.

VII. Prayer

Wherefore, the plaintiffs and others similarly situated are in need of equitable relief and accordingly pray your Honorable Court:

1. That a Decree be entered restraining the defendants preliminarily until final hearing and perpetually thereafter from expending any funds of the Commonwealth of Pennsylvania whatever pursuant to any appropriations made or allocated for the enforcement of Act No. 304, a copy of which is attached to this Bill and marked Exhibit "A".

2. That a Decree be entered restraining the defendants, Lewis G. Hines, Secretary of Labor and Industry of the Commonwealth of Pennsylvania, Lynn G. Adams, Commissioner of Pennsylvania State Motor Police, William J. Hamilton, Jr., Secretary of Revenue of the Commonwealth of Pennsylvania, Warren R. Roberts, Auditor General of the Commonwealth of Pennsylvania, and F. Clair Ross, [fol. 13] State Treasurer of the Commonwealth of Pennsylvania, preliminarily until final hearing and perpetually thereafter, from taking any steps whatever pursuant to the authority supposedly conferred on them by Act No. 304 and from enforcing the provisions of the said Act.

3. That your Honorable Court grant such further and other relief as to it may seem proper.

(S.) Isidor Ostroff, Herman Steerman, Harold Jethro Budd, Attorneys for Plaintiffs.

[fols. 14-15] *Duly sworn to by Bernard Davidowitz et al. Jurats omitted in printing.*

[fol. 16] EXHIBIT "A" TO COMPLAINT

Cases. (S. B. 199; H. B. 313.) Approved June 21, 1939

Registration of Aliens

304. An act requiring certain aliens to register with the Department of Labor and Industry and to carry and upon proper demand, to exhibit identification cards; prohibiting the issuing of certain registrations and licenses to aliens under certain circumstances; and prescribing penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. On or before January 1, 1940, and during the month of December 1939 and of each year thereafter, every alien 18 years or over residing in this Commonwealth who is not a father or mother of a son or daughter who has served in the service of the United States during any war or who has not filed an application declaring his or her intention to become an American citizen or who, having filed such application, shall not have become naturalized within a period of three years thereafter except such aliens who have resided continuously in the United States since December 31, 1908, and who have never been convicted of any criminal offense in any court of record, shall register with the Department of Labor and Industry on forms to be prescribed and furnished by the department, and every such alien becoming a resident of this Commonwealth after January 1, 1940, shall, in like manner, register with the department within 30 days after becoming such resident. Such registration shall show the name, age, address, occupation, name of employer, characteristics of appearance, name of wife or husband if any of such alien member, names and ages of all children under 18 residing with him or her, and if not his or her own, the names of their parents, and such other information and details as the department shall direct.

Sec. 2. For each original registration and for each annual registration thereafter, the person registered shall pay the department a registration fee of $1, and shall receive an alien identification card, which he or she shall carry at all times and shall exhibit upon demand by any police officer or agent of the Department of Labor and Industry displaying evidence of his authority.

Sec. 3. No motor vehicle shall be registered in the name of any alien, nor shall any license to operate a motor vehicle be issued to any alien except those exempted under the provisions of section 1 of this act, unless such alien shall exhibit an alien identification card for the current registration period.

Sec. 4. The Department of Labor and Industry shall classify such registrations in such manner as shall best serve the purpose of ready reference, and shall furnish a copy thereof to the Pennsylvania Motor Police. All such records

shall be retained for a period of at least three years. The department shall have power to make and enforce rules and regulations to carry into effect and enforce the provisions of this act.

[fol. 17] Sec. 5. Every alien, except those exempted under the provisions of section 1 of this act, over the age of 18 who has not declared his or her intention to become an American citizen and who fails to register as provided in this act within any of the periods required hereby shall, upon summary conviction thereof, be sentenced to pay a fine of not more than $100 or to undergo imprisonment for not more than 60 days, or both.

Every alien required to be registered who shall fail to carry his or her alien identification card or who shall fail or refuse to exhibit the same when properly required to do so shall, upon summary conviction thereof, be sentenced to pay a fine of not more than $10 or to undergo imprisonment for not more than 10 days, or both.

Sec. 6 (a). Summary proceedings under this act must be commenced by the filing of information before a justice of the peace, alderman, or a magistrate, which information must be filed in the name of the Commonwealth; and within not less than five days nor more than ten days, the magistrate, alderman, or justice of the peace shall send by registered mail to the person charged at the address of such person a notice in writing of the filing of the information, together with a copy thereof and a notice to appear within 10 days of the date of the written notice. If the person named in the information shall not voluntarily appear within 10 days of the date of the written notice, a warrant may then be issued and may be served by a peace officer having authority to serve warrants.

(b) The peace officer, after serving such warrant, shall take the defendant before a magistrate within the municipality in which the defendant is found, who shall take bail either for the defendant's appearance before the magistrate who issued the warrant or for his appearance for trial in the proper court if a summary hearing is waived.

Sec. 7. All acts and parts of acts inconsistent herewith are hereby repealed. (S. B. 134; H. B. 702.)

Approved June 21, 1939.

[fol. 18] [File endorsement omitted.]

[fol. 19] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER—Filed July 25, 1939

To the Honorable, the Judges of the said Court:

The defendants above-named by Claude T. Reno, Attorney General of the Commonwealth of Pennsylvania, and [fol. 20] William S. Rial, Deputy Attorney General, and representing each of the said defendants, make answer to the complaint as follows:

I. Jurisdiction and Venue

1. Admitted. Defendants, however, deny that the jurisdiction of this Court exists and may be invoked on behalf of Bernard Davidowitz who is alleged to be a citizen of the United States of America and a resident of the City of Philadelphia.

2. Admitted.

II. Description of Plaintiffs

3. Admitted.

4. Admitted.

III. Description of Defendants

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

[fol. 21] IV. Violations of Federal Constitution and Statutes upon Which Complaint Is Based

10. Admitted.

11. Denied. Defendants as advised by counsel deny that the said Act of Assembly, No. 304 of the Commonwealth of Pennsylvania of 1939, is null and void and of no effect:

(a) It is denied that the said Act of Assembly violates Article I, Section 8, Clause 3 of the Constitution of the United States;

(b) It is denied that the said Act of Assembly violates Article VI, Clause 2 of the Constitution of the United States;

(c) It is denied that the said Act of Assembly violates Section 1 of the Fourteenth Amendment to the Constitution of the United States;

(d) Denied.

(e) It is denied that said Act of Assembly violates divers provisions of the Constitution of Pennsylvania to wit:

1. Article I, Section 1 thereof;
2. Article I, Section 8 thereof;
3. Article I, Section 17 thereof;
4. Article III, Section 3 thereof;
5. Article III, Sections 7 and 8 thereof;
6. Article IX, Section 1 thereof.

[fol. 22] V. Facts of Complaint

12. Defendants deny the several averments contained in Paragraph 12. In particular:

(a) Defendants deny that the plaintiff, Bernard Davidowitz, is entitled to any relief within the jurisdiction of the said Court by reason of any averments as contained in the said sub-paragraph (a);

(b) Denied.

(c) Denied.

(d) Denied.

13. Denied.

14. Denied.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

20. Denied.

21. Denied.

22. Denied.

[fol. 23] VI. Need for Equitable Relief

23. Defendants deny that plaintiffs are entitled to any equitable relief under any facts averred in the complaint; they further deny that an injunction should issue enforcing the provisions of the said Act of Assembly of the Commonwealth of Pennsylvania, No. 304 of 1939 and that irreparable harm may come to the plaintiffs and others similarly situated, and particularly, they deny that an injunction should issue against the defendants severally named in the subparagraphs (a), (b), (c) and (d).

24. Defendants deny that unless Your Honorable Court restrains the enforcement of the said Act No. 304, the enforcement will:

(a) Interfere with the exclusive right of Congress over aliens and immigration;

(b) Violate the rights of persons guaranteed under the Fourteenth Amendment to the Constitution of the United States;

(c) Violate the civil rights of citizens of the United States guaranteed to them by the Constitution of the United States.

[fol. 24] VII. Prayer

Defendants deny the plaintiffs and others similarly situated, are in need of equitable relief; that they are entitled to the relief as prayed for in the prayer contained in said complaint.

VIII. Defenses

Several defendants named in the complaint are officers of the Commonwealth of Pennsylvania charged either directly or indirectly with certain duties in connection with the enforcement of the Act of the General Assembly of the said Commonwealth, No. 304 of 1939 and this answer is in-

[fol. 25] tended to raise certain questions in connection therewith and to challenge the right of the complainants under the facts averred, to the relief prayed for. The said answer is therefore filed in the nature of a demurrer substantially admitting the facts but challenging the legal conclusions of the complainants and the right of the complainants to the relief as prayed for under such conclusions.

First Defense

(a) The said Act of Assembly is not unconstitutional either under the Constitution of the United States or the Constitution of the Commonwealth of Pennsylvania and is not violative of any rights of the said complainants.

Second Defense

(b) The said Act of Assembly of the said Commonwealth is a proper exercise of the police powers of the said Commonwealth expressly reserved to it under the Constitution of the United States.

Third Defense

(c) Bernard Davidowitz is a citizen of the United States and of the Commonwealth of Pennsylvania and there is no diversity of citizenship between him and the defendants named in the complaint.

(S.) Claude T. Reno, Attorney General of the Commonwealth of Pennsylvania; (S.) William S. Rial, Deputy Attorney General.

[fol. 26] [File endorsement omitted.]

[fol. 27] In United States District Court

[Title omitted]

Order Setting Date for Argument on Motion for Judgment

And Now, to wit, this 2nd day of August, A. D. 1939, upon motion of plaintiffs, by their attorneys, Isidor Ostroff, Esq., Herman Steerman, Esq., Harold Jethro Budd, Esq., of Philadelphia, Pa., and Ralph P. Needle, Esq., of Scranton,

Pa., for judgment on the pleadings, the Court fixes the day of October 2, A. D. 1939, at 10 A. M. (E. S. T.) in Room Post Office and Federal Court Building, Scranton, Pennsylvania, as the time and place for argument on the above motion.

(S.) Albert L. Watson, U. S. District Court Judge.

[fol. 28] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR JUDGMENT ON PLEADINGS—Filed August 2, 1939

Pursuant to Rule 12 (c) of the Rules for Civil Procedure for the District Court of the United States, plaintiffs, by their attorneys, Isidor Ostroff, Esq., Herman Steerman, Esq., and Harold Jethro Budd, Esq., of Philadelphia, and Ralph P. Needle, Esq., of Scranton, Pennsylvania, file this Motion for judgment on the Pleadings, for the following reasons:

I. Jurisdiction and Venue

The defendants admit the jurisdiction and venue of the court, denying however that one of the plaintiffs, Bernard [fol. 29] Davidowitz, is in standing before your Honorable Court.

II. Description of Plaintiffs

This portion of the Complaint is admitted by the defendants.

III. Description of Defendants

This portion of the Complaint is also admitted by the defendants.

IV. Violation of Federal Constitution and Statutes Upon Which Complaint is Based

This portion of the Complaint is insufficiently denied.

V. Facts of Complaint

This section of the Complaint is also insufficiently denied.

VI. Need for Equitable Relief

The defendants do not sufficiently deny the need for equitable relief.

VII. Prayer

The defendants do not sufficiently deny the need for the equitable relief prayed for by plaintiffs.

VIII. Defenses

First Defense

This defense is insufficiently pleaded. It is merely a general allegation unsubstantiated by facts.

Second Defense

This defense is also insufficiently pleaded. It is merely a general allegation unsubstantiated by facts.

[fol. 30]

Third Defense

This defense is immaterial, irrelevant, unresponsive and insufficient.

Wherefore, plaintiffs, by their attorneys as aforesaid, move for judgment on the pleadings.

Isidor Ostroff, Herman Steerman, Harold Jethro Budd, Ralph P. Needle, Attorneys for Plaintiffs, by (S.) Isidor Ostroff.

[fol. 31] [File endorsement omitted.]

[fol. 32] IN UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

No. 201. Civil

BERNARD DAVIDOWITZ, a Resident, Citizen and Taxpayer of and to the Commonwealth of Pennsylvania, and Vincenzo Travaglini, a Resident and Taxpayer of and to the Commonwealth of Pennsylvania, for Themselves and on Behalf of Any and All Other Residents, Citizens and/or Taxpayers as May Wish to Join Them as Party Plaintiffs, Plaintiffs,

v.

LEWIS G. HINES, Secretary of Labor and Industry of the Commonwealth of Pennsylvania; Lynn G. Adams, Commissioner of Pennsylvania State Motor Police; William J. Hamilton, Jr., Secretary of Revenue of the Commonwealth of Pennsylvania; Warren R. Roberts, Auditor General of the Commonwealth of Pennsylvania, and F. Clair Ross, State Treasurer of the Commonwealth of Pennsylvania, Defendants

OPINION—Filed November 30, 1939

[fol. 33] BIGGS, Circuit Judge:

The General Assembly of the Commonwealth of Pennsylvania has enacted a statute approved June 21, 1939, requiring certain aliens to register annually with the Department of Labor and Industry of the Commonwealth and to carry and, upon demand of any police officer or agent of the Department of Labor and Industry, to exhibit identification cards.

This Act, No. 304 of the 163rd General Assembly,[1] requires such registration to be made by these aliens on or before the first day of January, 1940 and during the month of December, 1939. Certain aliens are excepted from the operation of the Act, including those residing in the Commonwealth who are father or mother of a son or daughter who served in the service of the United States during any war, or those who have filed declarations of intention to become American

[1] The Acts of the Session have not yet been compiled in pamphlet form.

citizens within a period of three years and who have not been convicted of any criminal offense in any court of record, or who have resided continuously in the United States since December 31, 1908. The Act provides that each registration shall show the name, age, address and occupation of the alien, the name of his or her employer, the characteristics or appearance of the alien and such other data and details as the Department of Labor and Industry shall direct. The Act provides also that no motor vehicle shall be registered in the name of any non-exempt alien and that a license to operate an automobile shall not be issued to any non-exempt alien except upon the exhibition of his identification card for the current registration period.

Drastic punishments are provided for those aliens who are required to register and fail to do so and lesser penalties are prescribed for the non-exempt alien who fails to carry with him his identification card or refuses to exhibit it [fol. 34] upon proper demand. A copy of the Act is set out upon the margin of this opinion.[2]

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[2] "An Act Requiring certain aliens to register with the Department of Labor and Industry and to carry and, upon proper demand, to exhibit identification cards; prohibiting the issuing of certain registrations and licenses to aliens under certain circumstances; and prescribing penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. On or before the first day of January, one thousand nine hundred and forty, and during the month of December, of the year one thousand nine hundred and thirty-nine and of each year thereafter, every alien, eighteen (18) years or over, residing in this Commonwealth, who is not a father or mother of a son or daughter who has served in the service of the United States during any war, or who has not filed an application declaring his or her intention to become an American citizen, or who, having filed such application, shall not have become naturalized within a period of three years thereafter, except such aliens who have resided continuously in the United States since December thirty-first, one thousand nine hundred and eight, and who have never been convicted of any criminal offence in any court of record, shall register with the Department of Labor and Industry, on forms to be prescribed and furnished by the department; and every such alien becoming a resident of

The suit at bar is brought by the plaintiffs to test the validity of the Act. They pray for an injunction against [fol. 35] the defendants, all officers of the Commonwealth of Pennsylvania, prohibiting the enforcement of the Act. The suit is framed as a class bill brought by the plaintiffs on behalf of "residents, citizens and taxpayers" of Pennsylvania.

The plaintiff, Davidowitz, is a naturalized citizen of the United States, a resident of Philadelphia and a taxpayer of the Commonwealth of Pennsylvania. The complaint alleges that he is of foreign appearance and speaks English with a noticeable foreign accent and therefore despite his naturalization he will be subjected to constant questioning [fol. 36] by police officers, will be compelled to demonstrate

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this Commonwealth after the first day of January, one thousand nine hundred and forty, shall, in like manner, register with the department within thirty days after becoming such resident. Such registration shall show the name, age, address, occupation, name of employer, characteristics of appearance, name of wife or husband, if any, of such alien member, names and ages of all children under eighteen (18) residing with him or her, and, if not his or her own, the names of their parents, and such other information and details as the department shall direct.

Section 2. For each original registration and for each annual registration thereafter, the person registered shall pay to the department a registration fee of one dollar ($1.00), and shall receive an alien identification card which he or she shall carry at all times and shall exhibit upon demand by any police officer or agent of the Department of Labor and Industry displaying evidence of his authority.

Section 3. No motor vehicle shall be registered in the name of any alien, nor shall any license to operate a motor vehicle be issued to any alien except those exempted under the provisions of section one of this act, unless such alien shall exhibit an alien identification card for the current registration period.

Section 4. The Department of Labor and Industry shall classify such registrations in such manner as shall best serve the purpose of ready reference, and shall furnish a copy thereof to the Pennsylvania Motor Police. All such records shall be retained for a period of at least three years. The department shall have power to make and enforce rules and

constantly that he is not an alien required to carry a registration card, will be unjustly discriminated against, constantly embarrassed and will have to carry proof of his naturalization with him continuously.

The plaintiff, Travaglini, is an alien who has resided in the City of Philadelphia, since his arrival in the United States from Italy in 1920. The complaint sets forth sufficient facts to show that he is not included within the exemptions of the Act. Travaglini contends that the Act encroaches upon a field confided by the Constitution to the Federal Government and that its enforcement will deny him equal protection of the laws. He states that he will be dis- [fol. 37] criminated against also because by the terms of the Act the Secretary of Revenue must refuse to issue to him either driver's license or owner's certificate for a motor vehicle except upon the production of his registration card and that this will interfere "* * * with his right as a resident

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regulations to carry into effect and enforce the provisions of this act.

Section 5. Every alien, except those exempted under the provisions of section one of this act, over the age of eighteen (18), who has not declared his or her intention to become an American citizen, and who fails to register as provided in this act within any of the periods required hereby, shall, upon summary conviction thereof, be sentenced to pay a fine of not more than one hundred dollars ($100.00) or to undergo imprisonment for not more than sixty (60) days, or both.

Every alien required to be registered, who shall fail to carry his or her alien identification card or who shall fail or refuse to exhibit the same when properly required to do so, shall, upon summary conviction thereof, be sentenced to pay a fine of not more than ten dollars ($10.00) or to undergo imprisonment for not more than ten (10) days, or both.

Section 6. (a) Summary proceedings under this act must be commenced by the filing of information before a justice of the peace, alderman or a magistrate, which information must be filed in the name of the Commonwealth, and within not less than five days nor more than ten days the magistrate, alderman or justice of the peace shall send by registered mail, to the person charged, at the address of such person, a notice in writing, of the filing of the information,

alien of * * * Pennsylvania to obtain employment requiring the use and operation of an automobile."

The defendants have filed an answer admitting all well pleaded facts. The plaintiffs have moved for judgment upon the pleadings in accordance with the provisions of Rule 12 (c) of the Federal Rules of Civil Procedure.

Jurisdiction

As to the Plaintiff, Travaglini

Jurisdiction is vested in this court by virtue of the provisions of Section 266 of the Judicial Code, as amended, (28 U. S. C. A. 380) [3] and of Section 24 (14) of the Judicial Code as amended by 36 Stat. 1092 (28 U. S. C. A. 41 (14)) providing that the District Courts of the United States shall have original jurisdiction of all suits at law or in equity "* * * to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage of any State, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the

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together with a copy thereof, and a notice to appear within ten (10) days of the date of the written notice. If the person named in the information shall not voluntarily appear within ten (10) days of the date of the written notice, a warrant may then be issued and may be served by a peace officer having authority to serve warrants.

(b) The peace officer, after serving such warrant shall take the defendant before a magistrate within the municipality in which the defendant is found, who shall take bail either for the defendant's appearance before the magistrate who issued the warrant or for his appearance for trial in the proper court if a summary hearing is waived.

Section 7. All acts and parts of acts inconsistent herewith are hereby repealed."

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[3] Section 266 of the Judicial Code as amended provides that three judges, one of whom shall be a Justice of the Supreme Court or a Circuit Judge, shall sit to hear an injunction suit by which it is sought to suspend or restrain the operation of a state statute.

United States, or of all persons within the jurisdiction of the United States." Hague v. Committee for Industrial Organization, — U. S. —.

The Act requires non-exempt aliens to be registered no later than January 1, 1940. Registration of aliens is to [fol. 38] commence upon December 1, 1939. The damage threatened to Travaglini therefore is imminent. The action at bar is not brought prematurely. Truax v. Raich, 239 U. S. 33, 36; Detroit Creamery Co. v. Kinnane, 264 F. 845, decree affirmed Kinnane v. Detroit Creamery Co., 255 U. S. 102; Pennsylvania v. West Virginia, 262 U. S. 553, 592; Trade Dollar Consolidated Mining Co. v. Fraser, 148 F. 585; Louisville & N. R. Co. v. Railroad Commission of Alabama, 157 F. 944.

As to the Plaintiff, Davidowitz

As to the plaintiff, Davidowitz, a naturalized citizen of the United States, his right to reside in the State of Pennsylvania and to move freely within that Commonwealth without unlawful interference by its police is protected by law and the Constitution. His rights as a citizen, however, are not justiciable in the suit at bar. The Act is not directed at citizens, either naturalized or native born. If any such were to suffer personal inconvenience, annoyance or embarrassment from enforcement of the Act, they would find existing law quite adequate to redress their grievances. Well advised, indeed, would be the police officer, attempting to enforce the statute, not to lay hands upon or annoy or harass any law-abiding citizen, regardless of his place of birth. In fact, the possible annoyance and embarrassment generally, which Davidowitz fears, would have to be so carefully guarded against by any one attempting to enforce the Act, that it is questionable whether the Act could be enforced at all. In any event, the point is that Davidowitz, like all other citizens, has no present complaint in this case, cognizable in a United States court. While he is a taxpayer of the Commonwealth of Pennsylvania, as averred and admitted, his complaint does not rest on a taxpayer's equity but on a merely anticipated violation of his rights as a citizen. The complaint, therefore, states no present cause of action in Davidowitz.

[fol. 39] The Law

We are of the opinion that the Act is unconstitutional.

The Act Encroaches Upon a Field Reserved to Federal Action

The Act fails to state or suggest its purpose. The Commonwealth contends that the statute provides for nothing more serious than a census and that its enforcement will be of service to Pennsylvania in administering certain state laws relating to aliens. For example, statutes of Pennsylvania provide that unnaturalized foreign born residents may not fish within the confines of the Commonwealth, P. L. 448, Section 240 (30 Purdon's Pennsylvania Statutes, Annotated 240), or hunt therein, P. L. 359, Article IX, Sections 901, 905 (34 Purdon's Pennsylvania Statutes, Annotated, 901, 905), or be employed upon any public work, P. L. 269, Section 1 (43 Purdon's Pennsylvania Statutes Annotated 151. In our opinion, however, the Act is far more than a census statute. It places conditions upon the right of an alien to reside in Pennsylvania. The alien must register annually and carry his alien registration certificate, simply a card of identity, with him at all times under pain of a drastic penalty. He must produce his registration certificate upon the demand of any police officer, and if he fails to do so may suffer a penalty nearly as drastic. The alien is thus placed under the constant surveillance of the police power of Pennsylvania, not as any other resident might be placed upon the occasion of the commission of a crime or for the good of the Commonwealth, but simply because he is an alien.

It must be assumed that Travaglini was lawfully admitted to the United States and that his admission was pursuant to the provisions of Federal law. He was admitted therefore, as was stated by the Chief Justice in Truax v. Raich, supra, p. 39, "* * * with the privilege of entering and abiding in the United States, and hence of [fol. 40] entering and abiding in any state in the Union." His right to reside in the United States or in any State depends upon and is settled by Federal law. This principle is decisive in the case at bar. It has been enunciated by the Supreme Court several times. In the case of Fong Yue Ting v. United States, 149 U. S. 698, 714, arising under the Chinese Exclusion Act of May 5, 1892, 27 Stat. 25, the Su-

preme Court stated, "Congress, having the right, as it may see fit, to expel aliens of a particular class, or to permit them to remain, has undoubtedly the right to provide a system of registration and identification of the members of that class within the country, and to take all proper means to carry out the system which it provides." In the case of Zakonaite v. Wolf, 226 U. S. 272, 275, arising upon appeal from an order of the Secretary of Commerce and Labor based upon the Act of February 20, 1907, 34 Stat. 898, requiring the deportation of an alien who was practicing prostitution, the Supreme Court said, "It is entirely settled that the authority of Congress to prohibit aliens from coming within the United States, and to regulate their coming includes authority to impose conditions upon the performance of which the continued liberty of the alien to reside within the bounds of this country may be made to depend * * *".

In the more recent case of Arrowsmith v. Voorhies, 55 F. (2d) 310, a statute of Michigan (Pub. Acts 1930, No. 241) was under consideration. It provided, among other things, that persons of foreign birth illegally entering the United States should be denied admission, or if detected after entry should be deported and that unnaturalized foreign born citizens should obtain certificates of legal residence. The court held this statute unconstitutional and stated that by its terms the State of Michigan was attempting to usurp a power vested by the Constitution exclusively in Congress "over the control of aliens and immigration". The court, citing Henderson v. Mayor of New York, 92 U. S. 259, and Chy Lung v. Freeman, 92 U. S. 275, made [fol. 41] plain that the Michigan statute could not be justified upon the theory of the exercise of state police power, and said, p. 312, "* * * the power to regulate the terms and conditions under which aliens may live in any of the several states having been given by the Constitution to the federal government, and that government having exercised it, the right of the federal government is paramount and exclusive, and the act under consideration is an unlawful invasion of it."

The decision of the Supreme Court in the Truax case cited above casts much light upon the correct determination of the question presented for our consideration. In the Truax case it appears that a statute of Arizona, Act

of December 14, 1914 (Laws of Arizona, 1915, Initiative Measures, p. 12) provided that any person or corporation employing more than five individuals at one time, of the number employed, should employ no less than 80% qualified electors or native born citizens of the United States. Raich, a native of Austria and an inhabitant of Arizona, but not a qualified elector, brought suit to enjoin the enforcement of this Act upon the ground that it would deprive him of his livelihood. The Supreme Court held the statute unconstitutional upon the ground that its provisions were repugnant to the Fourteenth Amendment. Chief Justice Hughes, delivering the opinion of the Court, said, p. 42, "The assertion of an authority to deny to aliens the opportunity of earning a livelihood when lawfully admitted to the State would be tantamount to the assertion of the right to deny them entrance and abode, for in ordinary cases they cannot live where they cannot work. And, if such a policy were permissible, the practical result would be that those lawfully admitted to the country under the authority of the Acts of Congress, instead of enjoying in a substantial sense and in their full scope the privileges conferred by the admission, would be segregated in such of the States as chose to offer hospitality."

While the Truax case deals specifically with a limitation imposed by a statute upon the right of an alien to [fol. 42] earn a living, its principle is applicable under the circumstances of the case at bar for Travaglini cannot live in Pennsylvania except under the burden of compulsory registration, precisely as Raich could not live in Arizona unless he was permitted freely to earn his livelihood. As stated by the Chief Justice, an alien cannot live where he cannot work. It is equally true that an alien cannot work where he cannot live. In the case at bar as in the Truax case the right of the alien to reside within the state is circumscribed by statute.

The power of the Federal Government to require the registration of aliens is clear. Congress has legislated to some extent in this particular field already. See Act of June 29, 1906, c. 3592, Sec. 1, 34 Stat. 596 (8 U. S. C. A. 106) and Act of February 5, 1917, c. 29, Sec. 12, 39 Stat. 882 (8 U. S. C. A. 148). Congress has also legislated in respect to a large part of the field of alien control, specifying terms and conditions upon which aliens may remain in the United

States, the method of their entry and the conditions upon which they may be deported. A considerable portion of Title 8 of the Code of the United States (8 U. S. C. A.) is devoted to these subjects. If existing provisions of the Federal laws are insufficient for the control of aliens, further legislation to such ends is within the discretion of Congress.

The Act does not pertain to a field in which a state may sustain an interest, Truax v. Raich, supra, pp. 39, 40, such as public employment, Heim v. McCall, 239 U. S. 175, ownership in land, Terrace v. Thompson, 263 U. S. 197, conservation of natural resources, Patsone v. Pennsylvania, 232 U. S. 138, and McCready v. Virginia, 94 U. S. 391.

The Act therefore is unconstitutional because it purports to operate in a field in which the individual states of the United States are without authority to legislate. Therefore it may not be justified as an exercise of the police power of the State of Pennsylvania. It attempts to usurp power confided by the Constitution to the Federal government.

[fol. 43] The Act Denies Equal Protection of the Laws to the Alien

Since the Act impairs the right of the non-exempt alien to reside within the Commonwealth of Pennsylvania, the Commonwealth having legislated in a field reserved to the Federal government, the classification of the Act is as unwarranted as it is unreasonable and the alien is thereby deprived of the equal protection of the laws guaranteed to him by Section 1 of the Fourteenth Amendment.

While the prohibition of the Amendment against the denial of equal protection of the laws to "any person", whether citizen or alien, does not require a statute to have equality of operation insofar as every individual may be concerned and such a statute may affect the status of each individual differently in his relationship to its subject matter, nonetheless the classification must be based upon reasonable grounds. The statute at bar cannot be so justified, but, on the contrary, as we have indicated, imposes a burden upon aliens simply because they are aliens. It is based upon the single fact of alienage. Even assuming that the Commonwealth of Pennsylvania possessed power to make the classification under consideration, nonetheless that classification is unreasonable for the Commonwealth would

permit citizens and such aliens as are within the exemptions of the statute to pass freely from place to place, but all other aliens, though lawfully within the State, must register, pay annual fees, carry identification cards to be produced on demand, and are subject to drastic penalties if they do not do so. The leading case condemning an analogous classification as unreasonable is the Truax case, but see also Ex Parte Kotta, 187 Cal. 27, 31, 32, 200 Pacific 937, a case almost upon all fours with that at bar. In the Kotta case the Supreme Court of California held, relying upon both the Fourteenth Amendment and the Civil Rights Act, that the alien poll tax law of California (Statutes of California, 1921, Ch. 424, pp. 613-624), creating an alien poll tax, was invalid. The court said, p. 31, "Stated very generally, the requirement is for [fol. 44] equal protection and security of all, citizens and aliens alike, under like circumstances, in the enjoyment of their personal and civil rights, and in the imposition of burdens, such as penalties, taxes, * * *".

The classification of the statute at bar is not applied even to all aliens, or to such aliens as are ineligible for citizenship or to those who have failed to file a declaration of intention to become citizens. The Act requires registration by an alien who has not filed a declaration of intention to become a citizen or who has filed such a declaration and has failed to become a citizen within three years. That this requirement is arbitrary, unreasonable and capricious, is demonstrated by the provisions of Section 382 of Title 8 of the Judicial Code as amended, 52 Stat. 1247 (8 U. S. C. A. 382), a section of the Federal Naturalization Act, which provides that in order to admit an alien to citizenship it shall appear to the satisfaction of the court that immediately preceding the date of the alien's application for citizenship he "* * * has resided continuously within the United States, for at least five years * * *". It follows therefore that if it is the intent of the Statute to single out persons who are not in sympathy with our institutions and to create a class of them, it fails palpably.

It is not an unreasonable conclusion that the primary purpose of the Act was to force aliens in the State to become naturalized. As much was argued at bar by counsel for the Commonwealth. While naturalization of aliens residing within our borders is a matter to be encouraged, the desire of the applicant for citizenship should be inspired

and engendered by his observation of and experience with the living example of true democracy. It must never be compelled by an act of oppression or tyranny. Otherwise, we might well be deluding ourselves in believing that, when the new citizen abjures allegiance to his late sovereign and swears fealty to our government, his act is one of the heart and not of a designing mind, goaded to a subterfuge. Citizenship, in the best sense of that term, rather than the number of naturalizations, is the thing of real importance. [fol. 45] Regulation of naturalization rests with the Federal government.

A further purpose of the Legislature may well have been to cause aliens to leave Pennsylvania and enter states where they are not compelled to register or subjected to a registration fee. If so, the statute looks down that dangerous road by which the states of the United States might well reach the unhappy status of competitive nations. The Act sub judice is not far removed from those statutes which provide for fees, exactions, licenses and even import taxes directed by state against state, their respective goods and inhabitants. For a state to require an alien resident to carry a card of identity could result in any citizen being compelled to prove upon demand that he is not in the class designated. The control of aliens and the conditions of their habitation in the states of the United States must remain in the Federal government.

We wish to make it plain that, in passing upon the questions involved in this case, we have given no effect whatsoever to Travaglini's complaint that, as a non-exempt alien, he would be damaged by being unable to procure an automobile license in Pennsylvania. The provision of the statute in that respect falls necessarily because the Act as a whole falls. However, what the State might do directly in the matter of prohibiting the issuance of automobile licenses to aliens (See Patsone v. Pennsylvania, supra), it is unnecessary for us either to consider or decide. Accordingly, we express no opinion in such regard and mean to imply none.

We do not deem it necessary to comment upon other contentions expressed at the argument and upon the briefs.

A perpetual injunction will issue against the defendants named, officers of the Commonwealth of Pennsylvania, (Ex parte Young, 209 U. S. 123, 155, 161; Philadelphia Com-

pany v. Stimson, 223 U. S. 607, 620, and Truax v. Raich, supra, p. 37) enjoining them from enforcing the Act.

(S.) John Biggs, Jr., U. S. Circuit Judge; (S.) Charles Alvin Jones, U. S. Circuit Judge; (S.) Albert L. Watson, U. S. District Judge.

November 30, 1939.

[File endorsement omitted.]

[fol. 46] In United States District Court, Middle District of Pennsylvania

Writ of Perpetual Injunction—Filed December 11, 1939

The President of the United States to Lewis G. Hines, Secretary of Labor and Industry of the Commonwealth of Pennsylvania, Lynn G. Adams, Commissioner of Pennsylvania State Motor Police, William J. Hamilton, Jr., Secretary of Revenue of the Commonwealth of Pennsylvania, Warren R. Roberts, Auditor General of the Commonwealth of Pennsylvania, and F. Clair Ross, State Treasurer of the Commonwealth of Pennsylvania, Greeting:

Whereas, Bernard Davidowitz, a resident, citizen and taxpayer of and to the Commonwealth of Pennsylvania, Vincenzo Travaglini, a resident and taxpayer of and to the Commonwealth of Pennsylvania, for themselves, and on behalf of any and all other residents, citizens, and/or taxpayers, as may wish to join them as party plaintiffs, lately exhibited their bill of complaint, in the District Court of the United States, for the Middle District of Pennsylvania, in the Third Circuit, against you, the said Defendants, praying to be relieved touching the matters therein complained of, and especially that you Lewis G. Hines, Secretary of Labor and Industry of the Commonwealth of Pennsylvania, Lynn G. Adams, Commissioner of Pennsylvania State Motor Police, William J. Hamilton, Jr., Secretary of Revenue of the Commonwealth of Pennsylvania, Warren R. Roberts, Auditor General of the Commonwealth of Pennsylvania, and F. Clair Ross, State Treasurer of the Commonwealth of Pennsylvania, and all acting under you may be restrained from further enforcing the Act No. 304, of

the 163rd General Assembly and the rights of the said complainants in the premises, in the said bill mentioned, in any way or manner, contrary to law or equity: We, therefore, in consideration thereof and also of the particular matters in the said bill set forth, do strictly command and enjoin you, the said Lewis G. Hines, Secretary of Labor and Industry of the Commonwealth of Pennsylvania, Lynn G. Adams, Commissioner of Pennsylvania State Motor Police, William J. Hamilton, Jr., Secretary of Revenue of the Commonwealth of Pennsylvania, Warren R. Roberts, Auditor General of the Commonwealth of Pennsylvania, and F. Clair Ross, State Treasurer of the Commonwealth of Pennsylvania, your servants, agents, and all others acting under or with you, and each and every of you, that from henceforth You Do Absolutely And Entirely Desist and Refrain from the further constructing, or using, or enforcing in any way or manner, directly or indirectly, the Act of the 163rd General Assembly, No. 304, requiring registration to be made by aliens on or before the first day of January, 1940 and during the month of December, 1939, described in the said bill of complaint, and in the affidavit of the complainants thereto annexed.

Witness The Honorable the Judges of the District Court of the United States, for the Middle District of Pennsylvania, at Scranton, this 30th day of November, A. D. 1939 and in the 164th year of the Independence of the United States.

S. W. Hofford, Clerk of the District Court. Per (s) R. G. Lohmann, Deputy. (Seal.)

Dec. 4, 1939. Service of the within writ is hereby accepted for the various respondents named in the said writ.

(S.) William S. Rial, Deputy Attorney General; M. Louise Rutherford, Deputy Atty. General.

[File endorsement omitted.]

[fol. 47] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER AMENDING WRIT OF PERPETUAL INJUNCTION—Filed Dec. 15, 1939

And Now, to-wit, this 15th day of December, 1939, it is ordered that the writ of perpetual injunction heretofore

issued be and the same hereby is amended by striking the word "further" where it first appears in said writ; by striking from the said writ the phrase "the further constructing, or using, or"; and by striking therefrom the words "requiring registration to be made by aliens on or before the first day of January, 1940 and during the month of December, 1939."

(S.) Albert L. Watson, United States District Judge.

[File endorsement omitted.]

[fol. 48] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER AMENDING OPINION—Filed December 29, 1939

And Now, to-wit, this 28th day of December, 1939, it is ordered that the printed opinion filed in the above entitled cause be amended by striking from note 3 appearing upon page 6 the semicolon, quotation mark and three periods before the word "that" as the same appear and the quotation mark after the word "statute" in said note; and by striking the numeral "2" from the second line of the second para-
[fol. 49] graph of page nine and substituting in lieu thereof the numeral "3"; and by striking the word "Judicial" from the eleventh line of the second paragraph of page eleven of said printed opinion and inserting after the word "Code" the phrase "of the United States (8 U. S. C. A.)".

For the Court.

(S.) John Biggs, Jr., United States Circuit Judge.

[File endorsement omitted.]

[fol. 50] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed February 7, 1940

To the Honorable Judges of the United States District Court for the Middle District of Pennsylvania:

Lewis G. Hines, Secretary of Labor and Industry of the Commonwealth of Pennsylvania, Lynn G. Adams, Commis-

sioner of Pennsylvania State Motor Police, William J. Hamilton, Jr., Secretary of Revenue of the Commonwealth of Pennsylvania, Warren R. Roberts, Auditor General of the Commonwealth of Pennsylvania, and F. Clair Ross, [fol. 51] State Treasurer of the Commonwealth of Pennsylvania, defendants in the above entitled case, feeling themselves aggrieved by the final decree entered by this court on November 30, 1939, pray an appeal from said decree to the Supreme Court of the United States, in accordance with the statutory requirements.

The particulars wherein they consider the decree erroneous are set forth in the assignment of errors accompanying this petition, and to which reference is hereby made.

Said defendants pray that a transcript of the record, proceedings, and papers on which said decree was made and entered, duly authenticated, be transmitted forthwith to the Supreme Court of the United States.

(S.) William S. Rial, Deputy Attorney General;
M. Louise Rutherford, Deputy Attorney General;
Claude T. Reno, Attorney General.

Dated February —, 1940.

[fol. 52] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed February 7, 1940

Now come Lewis G. Hines, Secretary of Labor and Industry of the Commonwealth of Pennsylvania, Lynn G. Adams, Commissioner of Pennsylvania State Motor Police, William J. Hamilton, Jr., Secretary of Revenue of the Commonwealth of Pennsylvania, Warren R. Roberts, Auditor General of the Commonwealth of Pennsylvania, and F. Clair Ross, State Treasurer of the Commonwealth of Pennsylvania, defendants in the above entitled cause, by their re-
[fol. 53] spective counsel and in connection with their appeal, file the following assignments of error upon which they will rely in the prosecution of their appeal to the Supreme Court of the United States from the final decree of this court, entered November 30, 1939.

The District Court erred:

(1) In holding and deciding that the Alien Registration Act of the General Assembly of the Commonwealth of Pennsylvania, approved June 21, 1939, P. L. 652, was unconstitutional, by stating:

"We are of the opinion that the Act is unconstitutional."

(2) In holding and deciding that the said Alien Registration Act:

"* * * does not pertain to a field in which a state may sustain an interest, Truax v. Raich, supra, pp. 39, 40, such as public employment, Heim v. McCall, 239 U. S. 175, ownership in land, Terrace v. Thompson, 263 U. S. 197, conservation of natural resources, Patsone v. Pennsylvania, 232 U. S. 138 and McCready v. Virginia, 94 U. S. 391."

(3) In holding and deciding that:

"The Act therefore is unconstitutional because it purports to operate in a field in which the individual states of the United States are without authority to legislate. Therefore it may not be justified as an exercise of the police power of the State of Pennsylvania. It attempts to usurp power confided by the Constitution to the Federal Government."

(4) In holding and deciding that the:

"* * * purpose of the Legislature may well have been to cause aliens to leave Pennsylvania and enter states where they are not compelled to register or subjected to a registration fee. * * *"

[fol. 54] (5) In holding and deciding that:

"* * * The control of aliens, and the conditions of their habitation in the states of the United States must remain in the Federal government."

(6) In holding and deciding that the Act imposed an unreasonable classification and failed to distinguish the Penn-

sylvania Act from the acts in question in the Truax Case and Ex Parte Kotta Cases.

(S.) William S. Rial, Deputy Attorney General;
M. Louise Rutherford, Deputy Attorney General;
Claude T. Reno, Attorney General.

Dated February —, 1940.

[fol. 55] [File endorsement omitted.]

[fol. 56] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed February 8, 1940

In the above-entitled cause, Lewis G. Hines, Secretary of Labor and Industry of the Commonwealth of Pennsylvania, Lynn G. Adams, Commissioner of Pennsylvania State Motor Police, William J. Hamilton, Jr., Secretary of Revenue of the Commonwealth of Pennsylvania, Warren R. Roberts, Auditor General of the Commonwealth of Pennsylvania, and F. Clair Ross, State Treasurer of the Commonwealth of Pennsylvania, defendants, having made and filed their [fol. 57] petition, praying an appeal to the Supreme Court of the United States from the final decree of this court, entered November 30, 1939, and having also made and filed an assignment of errors and a statement of jurisdiction, and having in all respects conformed to the statutes and rules of the court in said case made and provided, it is

Ordered and decreed that the appeal be, and the same is hereby allowed as prayed for.

By the Court:

(S.) Albert L. Watson, United States District Judge.

Dated, February 8, 1940.

[fols. 58-62] [File endorsement omitted.]

[fol. 63] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed February 7, 1940

To the Clerk:

You will please prepare a transcript of the record in the above entitled cause to be transmitted to the Supreme Court

of the United States pursuant to the appeal of said court [fol. 64] heretofore filed and allowed, and incorporate in said transcript the following:

(1) Complaint of Bernard Davidowitz and Vincenzo Travaglini.
(2) Answer of Claude T. Reno, Attorney General.
(3) Motion for judgment on pleadings.
(4) Opinion of the court, filed November 30, 1939.
(5) Final decree, filed November 30, 1939.
(6) Petition for appeal.
(7) Notice of appeal and acknowledgment of service.
(8) Assignment of errors.
(9) Order allowing appeal.
(10) Statement of jurisdiction of the Supreme Court, together with notice and acknowledgment of service.
(11) Praecipe for transcript of record and acknowledgment thereof.
(12) Clerk's certificate.

(S.) William S. Rial, Deputy Attorney General;
M. Louise Rutherford, Deputy Attorney General;
Claude T. Reno, Attorney General.

Dated February —, 1940.

(Proof of service omitted in printing.)

[fols. 65-72] [File endorsement omitted.]

[fol. 73] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 74] Citation in usual form showing service on R. P. Needle, filed Feb. 8, 1940, omitted in printing.

[fol. 75] In Supreme Court of the United States

Statement of Points to be Relied Upon and Designation of the Record to be Printed—Filed March 14, 1940

Come now the appellants and say that they will rely upon the points in the Assignment of Error in brief and oral

argument before this Court on their appeal in the above entitled cause.

[fol. 76] Appellants further state that the entire record in this cause as offered in this Court is necessary for consideration of the points set forth above.

William S. Rial, Deputy Attorney General. M. Louise Rutherford, Deputy Attorney General. Claude T. Reno, Attorney General.

March 14, 1940.

Service of a copy of this statement of points to be relied upon and designation of the record to be printed is acknowledged this 14th day of March, 1940.

——, Counsel for Appellees.

[fol. 77] [File endorsement omitted.]

Endorsed on cover: File No. 44,184. M. Pennsylvania, D. C. U. S. Term No. 22. Lewis G. Hines, Secretary of Labor and Industry of the Commonwealth of Pennsylvania, et al., Appellants, vs. Bernard Davidowitz and Vincenzo Travaglini. Filed March 1, 1940. Term No. 22, O. T. 1940.